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6 **BEFORE THE**
7 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. PT 2007-2616

11 **CHERYL LEA FULLER**
12 2190 W. Aurora Avenue
13 Porterville, CA 93257

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

14 Psychiatric Technician License
15 Number PT 31522

Respondent.

16 **FINDINGS OF FACT**

17 1. On or about March 18, 2011, Complainant Teresa Bello-Jones, J.D., M.S.N., R.N., in
18 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric
19 Technicians ("Board"), Department of Consumer Affairs, ("Complainant") filed Accusation No.
20 PT 2007-2616 against Cheryl Lea Fuller ("Respondent") before the Board. A true and correct
21 copy of Accusation No. PT 2007-2616 is attached hereto, marked Exhibit A, and incorporated
22 herein by this reference.

23 2. On or about November 22, 2002, the Board issued Psychiatric Technician License
24 No. PT 31522 to Respondent. The Psychiatric Technician License expired on October 31, 2008,
25 and has not been renewed.

26 3. On or about March 18, 2011, Respondent was served by Certified and First Class
27 Mail copies of the Accusation No. PT 2007-2616, Statement to Respondent, Notice of Defense,
28 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
and 11507.7) at Respondent's address of record which, pursuant to Business and Professions

1 Code section 136, is required to be reported and maintained with the Board. Respondent's
2 address of record is: 2190 W. Aurora Avenue, Porterville, CA, 93257.

3 4. Service of the Accusation was effective as a matter of law under the provisions of
4 Government Code section 11505, subdivision (c) and/or Business & Professions Code ("Code")
5 section 124.

6 5. The aforementioned documents were returned by the U.S. Postal Service as
7 undeliverable.

8 6. Government Code section 11506 states, in pertinent part:

9 (c) The respondent shall be entitled to a hearing on the merits if the respondent
10 files a notice of defense, and the notice shall be deemed a specific denial of all parts
11 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

12 7. Respondent failed to file a Notice of Defense within fifteen (15) days after service
13 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
14 Accusation No. PT 2007-2616.

15 8. California Government Code section 11520 states, in pertinent part:

16 (a) If the respondent either fails to file a notice of defense or to appear at the
17 hearing, the agency may take action based upon the respondent's express admissions
18 or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

19 9. Pursuant to its authority under Government Code section 11520, the Board finds
20 Respondent is in default. The Board will take action without further hearing and, based on the
21 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
22 as well as taking official notice of all the investigatory reports, exhibits, and statements contained
23 therein on file at the Board's offices regarding the allegations contained in Accusation No. PT-
24 2007-2616, finds that the charges and allegations in Accusation No. PT 2007-2616 are, separately
25 and severally, found to be true and correct by clear and convincing evidence.

26 10. Taking official notice of its own internal records, pursuant to Code section 125.3, it is
27 hereby determined that the reasonable costs for Investigation and Enforcement is \$10,648.75 as of
28 May 2, 2011.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Cheryl Lea Fuller (“Respondent”) has subjected her Psychiatric Technician License No. PT 31522 to discipline.
2. The agency has jurisdiction to adjudicate this case by default.
3. The Board of Vocational Nursing and Psychiatric Technicians (“Board”) is authorized to revoke Respondent's Psychiatric Technician License based upon the following violations alleged in PT 2007-2616 which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:
 - a. Respondent violated Business and Professions Code (“Code”) section 4521, subdivision (f), in that on or about November 3, 2009, in the criminal proceeding titled *People v. Cheryl Lea Fuller* (Super. Ct. Tulare County, 2009, Case No. PCM217450), Respondent pled nolo contendere to violating Vehicle Code section 23152, subdivision (a) [driving under the influence of drugs, to wit, Soma and Fiorinal], a misdemeanor. Said crime is substantially related to the qualifications, functions, and duties of a psychiatric technician. Respondent admitted she had taken Soma and Fiorinal;
 - b. Respondent violated Code section 4521, subdivision (a)(5), in that on or about January 17, 2009, Respondent used dangerous drugs including, but not limited to, Soma and/or Fiorinal, to an extent or in a manner dangerous or injurious to herself, others, and the public;
 - c. Respondent violated Code section 4521, subdivision (a)(6), in that on or about November 3, 2009, Respondent was convicted of a criminal offense involving the consumption of dangerous drugs;
 - d. Respondent violated Code section 4521, subdivision (a)(4), in that while employed and/or on duty as a psychiatric technician at Porterville Developmental Center located in Porterville, California, Respondent self-administered the controlled substance Lortab without lawful authority and her drug test resulted in positive for Lortab; and
 - e. Respondent violated Code section 4521, subdivision (a)(5), in that on or about January 17, 2008, while employed and/or on duty as a psychiatric technician at Porterville

1 Developmental Center located in Porterville, California, Respondent used the controlled
2 substance Lortab to an extent or in a manner dangerous or injurious to herself, others, and/or the
3 public.

4 **ORDER**

5 IT IS SO ORDERED that Psychiatric Technician License No. PT 31522, heretofore issued
6 to Respondent Cheryl Lea Fuller, is **REVOKED**.

7 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
8 written motion requesting that the Decision be vacated and stating the grounds relied on within
9 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
10 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

11 This Decision shall become effective on August 28, 2011.

12 It is so ORDERED July 29, 2011

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16 FOR THE BOARD OF VOCATIONAL NURSING
17 AND PSYCHIATRIC TECHNICIANS
18 DEPARTMENT OF CONSUMER AFFAIRS

19 SA2009310033

20 Attachment:

21 Exhibit A: Accusation
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Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 LESLIE A. BURGERMYER
Deputy Attorney General
4 State Bar No. 117576
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5337
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

FILED

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Board of Vocational Nursing
and Psychiatric Technicians

8 **BEFORE THE**
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. PT 2007-2616

12 **CHERYL LEA FULLER**
2190 W. Aurora Avenue
13 Porterville, CA 93257

A C C U S A T I O N

14 Psychiatric Technician License No. PT 31522

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Accusation solely
19 in her official capacity as the Executive Officer of the Board of Vocational Nursing and
20 Psychiatric Technicians ("Board"), Department of Consumer Affairs.

21 2. On or about November 22, 2002, the Board issued Psychiatric Technician License
22 Number PT 31522 to Cheryl Lea Fuller ("Respondent"). Respondent's psychiatric technician
23 license expired on October 31, 2008.

24 **STATUTORY AND REGULATORY PROVISIONS**

25 3. Business and Professions Code ("Code") section 4520 provides, in pertinent part, that
26 the Board may discipline any licensed psychiatric technician for any reason provided in Article 3
27 (commencing with section 4520) of the Psychiatric Technicians Law (Code § 4500, et. seq.)
28

1 4. Code section 118, subdivision (b), provides, in pertinent part, that the expiration of a
2 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
3 period within which the license may be renewed, restored, reissued or reinstated. Under Code
4 section 4545, the Board may renew an expired license at any time within four years after the
5 expiration.

6 5. Code section 4521 states, in pertinent part:

7 The board may suspend or revoke a license issued under this chapter [the
8 Psychiatric Technicians Law (Bus. & Prof Code section 4500, et seq.)] for any of the
following reasons:

9 (a) Unprofessional conduct, which includes but is not limited to any of
10 the following:

11

12 (4) Obtain or possess in violation of law, or prescribe, or except as
13 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
14 himself or herself or furnish or administer to another, any controlled substance as
defined in Division 10 (commencing with Section 11000) of the Health and Safety
Code or any dangerous drug as defined in Section 4022

15 (5) Use any controlled substance as defined in Division 10 (commencing
16 with Section 11000) of the Health and Safety Code, or any dangerous drug as defined
17 in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or
injurious to himself or herself, any other person, or the public or to the extent that the
use impairs his or her ability to conduct with safety to the public the practice
authorized by his or her license.

18 (6) Be convicted of a criminal offense involving the falsification of
19 records concerning prescription, possession, or consumption of any of the substances
20 described in paragraphs (4) and (5), in which event the record of the conviction is
conclusive evidence of the conviction. The board may inquire into the circumstances
surrounding the commission of the crime in order to fix the degree of discipline.

21

22 (f) Conviction of any offense substantially related to the qualifications,
23 functions, and duties of a psychiatric technician, in which event the record of the
24 conviction shall be conclusive evidence of the conviction. The board may inquire
into the circumstances surrounding the commission of the crime in order to fix the
degree of discipline . . .

25 6. Code section 4523 states:

26 A plea or verdict of guilty or a conviction following a plea of nolo
27 contendere made to a charge substantially related to the qualifications, functions and
28 duties of a psychiatric technician is deemed to be a conviction within the meaning of
this article. The board may order the license suspended or revoked or may decline to
issue a license, when the time for appeal has lapsed, or the judgment or conviction

1 has been affirmed on appeal or when an order granting probation is made suspending
2 the imposition of sentence, irrespective of a subsequent order under the provisions of
3 Section 1203.4 of the Penal Code allowing the person to withdraw his plea of guilty
4 and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing
5 the accusation, information, or indictment.

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7. Code section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device
unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits
dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts
this device to sale by or on the order of a -----," "Rx only," or words of similar
import, the blank to be filled in with the designation of the practitioner licensed to use
or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.

8. Health and Safety Code section 11170 states that no person shall prescribe,
administer, or furnish a controlled substance for himself.

9. California Code of Regulations, title 16, section 2578, states, in pertinent part:

For the purposes of denial, suspension, or revocation of a license pursuant
to Division 1.5 (commencing with Section 475) of the Business and Professions
Code, a crime or act shall be considered to be substantially related to the
qualifications, functions or duties of a licensed psychiatric technician if to a
substantial degree it evidences present or potential unfitness of a licensed psychiatric
technician to perform the functions authorized by his license in a manner consistent
with the public health, safety, or welfare.

....

(f) Any crime or act involving the sale, gift, administration, or furnishing
of 'narcotics or dangerous drugs or dangerous devices' as defined in Section 4022 of
the Business and Professions Code.

COST RECOVERY

10. Code section 125.3 provides, in pertinent part, that a Board may request the
administrative law judge to direct a licensee found to have committed a violation or violations of
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case.

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1 officer determined based on his observations and Respondent's statement regarding her use of
2 medications, objective signs and symptoms of impairment, and performance on the FSTs that
3 Respondent had been driving while under the influence of prescription medication.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Use of Dangerous Drugs to an Extent or in a Manner 6 Dangerous or Injurious to Oneself or Others)**

7 16. Respondent is subject to disciplinary action pursuant to Code section 4521,
8 subdivision (a)(5), on the grounds of unprofessional conduct, in that on or about January 17,
9 2009, Respondent used dangerous drugs, including, but not limited to, Soma and/or Fiorinal, to
10 an extent or in a manner dangerous or injurious to herself, others, and the public, as set forth in
11 paragraphs 14 and 15 above.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Conviction of a Crime Involving the Consumption of Dangerous Drugs)**

14 17. Respondent is subject to disciplinary action pursuant to Code section 4521,
15 subdivision (a)(6), on the grounds of unprofessional conduct, in that on or about November 3,
16 2009, Respondent was convicted of a criminal offense involving the consumption of dangerous
17 drugs, as set forth in paragraph 14 above.

18 **PORTERVILLE DEVELOPMENTAL CENTER**

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Self-Administration of Controlled Substances)**

21 18. Respondent is subject to disciplinary action pursuant to Code section 4521,
22 subdivision (a)(4), on the grounds of unprofessional conduct, in that while employed and/or on
23 duty as a psychiatric technician at Porterville Developmental Center located in Porterville,
24 California, Respondent self-administered the controlled substance Lortab without lawful authority
25 as follows: On or about January 17, 2008, unit supervisor S. J. met with Respondent to discuss
26 her ongoing attendance problem. S. J. observed that Respondent appeared lethargic during the
27 meeting and "nodded off" several times. S. J. had various medical staff, including registered
28 nurse D. W., conduct a "reasonable suspicion nursing assessment" of Respondent.

1 D. W. observed that Respondent appeared lethargic and confused. Respondent was also
2 unable to state what day of the week it was. Fuller was transported by ambulance to Sierra View
3 District Hospital Emergency Room for further evaluation at the direction of Dr. F. On January
4 18, 2008, S. J. called Respondent at home in order to check on her condition. Respondent told
5 S. J. that her hospital test results (drug screen) returned positive for Lortab. Respondent admitted
6 to S. J. that she had taken her husband's Lortab medication.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 **(Use of Controlled Substances to an Extent or in a Manner**

9 **Dangerous or Injurious to Oneself or Others)**

10 19. Respondent is subject to disciplinary action pursuant to Code section 4521,
11 subdivision (a)(5), on the grounds of unprofessional conduct, in that on or about January 17,
12 2008, while employed and/or on duty as a psychiatric technician at Porterville Developmental
13 Center located in Porterville, California, Respondent used the controlled substance Lortab to an
14 extent or in a manner dangerous or injurious to herself, others, and/or the public, as set forth in
15 paragraph 18 above.

16 **PRAYER**

17 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Bureau of Vocational Nursing and Psychiatric Technicians
19 issue a decision:

20 1. Revoking or suspending Psychiatric Technician License Number PT 31522, issued to
21 Cheryl Lea Fuller;

22 2. Ordering Cheryl Lea Fuller to pay the Bureau of Vocational Nursing and Psychiatric
23 Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to
24 Business and Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: March 18, 2011.



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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